

House Bill 90

By: Representatives Bruce of the 61st, Trammell of the 132nd, Boddie of the 62nd, Dukes of the 154th, Shannon of the 84th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the
2 Department of Administrative Services, so as to define certain terms; to create the Division
3 of Supplier Diversity; to provide for appointment of a director; to provide for powers and
4 duties of the director; to create the position of minority and women owned business
5 enterprises state-wide advocate; to provide for appointment; to provide for duties; to provide
6 for provisions for state contracts; to provide for a state-wide disparity study; to provide for
7 contents; to provide for the structure of procurement contracts; to provide for purposes, rules,
8 and regulations; to provide for the promulgation of rules and regulations; to provide for
9 exceptions; to provide for waivers; to provide for certification; to provide for penalties for
10 violations; to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the Department
14 of Administrative Services, is amended by adding a new article to read as follows:

15 style="text-align:center">"ARTICLE 5

16 50-5-150.

17 As used in this article, the term:

18 (1) 'Certified business' means a business verified as a socially and economically
19 disadvantaged business enterprise or women owned business enterprise pursuant to Code
20 Section 50-5-157.

21 (2) 'Contracting agency' means a state agency which is a party or a proposed party to a
22 state contract.

23 (3) 'Contractor' means an individual; a business enterprise, including a sole
24 proprietorship, partnership, corporation, nonprofit corporation, or any other party to a

25 state contract; a bidder in conjunction with the award of a state contract; or a proposed
 26 party to a state contract.

27 (4) 'Director' means the director of the Division of Supplier Diversity of the Department
 28 of Administrative Services.

29 (5) 'Diversity practices' means a contractor's practices and policies with respect to:

30 (A) Utilizing certified businesses as subcontractors and suppliers in contracts awarded
 31 by a state agency or other public corporation; and

32 (B) Entering into partnerships, joint ventures, or other similar arrangements with
 33 certified businesses pursuant to applicable statutes or regulations governing an entity's
 34 utilization of minority and women owned business enterprises.

35 (6) 'Division' means the Division of Supplier Diversity of the Department of
 36 Administrative Services.

37 (7) 'Minority and women owned business enterprises' means both a minority owned
 38 business enterprise and a women owned business enterprise.

39 (8) 'Minority group member' means a United States citizen or permanent resident alien
 40 who is and can demonstrate membership in one of the following groups:

41 (A) African American persons having origins in any of the African racial groups;

42 (B) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, or Central or
 43 South American origin, regardless of race;

44 (C) Native American or Alaskan native persons having origins in any of the original
 45 peoples of North America; or

46 (D) Asian or Pacific Islander persons having origins in any of the East Asian countries,
 47 Southeast Asia, the Indian subcontinent, or the Pacific Islands.

48 (9) 'Minority owned business enterprise' means a business enterprise, including a sole
 49 proprietorship, partnership, or corporation, that is:

50 (A) At least 70 percent owned by one or more minority group members;

51 (B) An enterprise in which the ownership interest of such minority group members is
 52 real, substantial, and continuing;

53 (C) An enterprise in which such minority ownership has and exercises the authority to
 54 control independently the day-to-day business decisions of such enterprise; and

55 (D) Authorized to do business in this state and is independently owned and operated.

56 (10) 'Socially and economically disadvantaged' means such persons are socially
 57 disadvantaged because of their identification as members of certain groups that have
 58 suffered the effects of discriminatory practices or similar invidious circumstances over
 59 which they have no control. Such groups include, but are not limited to, African
 60 Americans, Hispanic Americans, Native Americans, Indian tribes, Asian-Pacific
 61 Americans, Native Hawaiian organizations, women, and other minorities.

62 (11) 'State agency' means a state department; a division, board, commission, or bureau
63 of any state department; or a state authority.

64 (12) 'State contract' means:

65 (A) A written agreement or purchase order instrument providing for a total expenditure
66 in excess of \$35,000.00 whereby a contracting agency is committed to expend or does
67 expend funds in return for labor; services such as legal, financial, and other professional
68 services; supplies; equipment; materials; or any combination of the foregoing to be
69 performed for or rendered or furnished to the contracting agency;

70 (B) A written agreement in excess of \$100,000.00 whereby a contracting agency is
71 committed to expend or does expend funds for the acquisition, construction, demolition,
72 replacement, major repair, or renovation of real property and improvements thereon;
73 and

74 (C) A written agreement in excess of \$100,000.00 whereby the owner of a state
75 assisted housing project is committed to expend or does expend funds for the
76 acquisition, construction, demolition, replacement, major repair, or renovation of real
77 property and improvements thereon for such project.

78 (13) 'State-wide advocate' means the person appointed by the commissioner of
79 administrative services to serve in the capacity of the minority and women owned
80 business enterprises state-wide advocate.

81 (14) 'Subcontract' means an agreement providing for a total expenditure in excess of
82 \$25,000.00 for the construction, demolition, replacement, major repair, renovation,
83 planning, or design of real property and improvements thereon between a contractor and
84 any individual or business enterprise, including a sole proprietorship, partnership,
85 corporation, or nonprofit corporation, in which a portion of a contractor's obligation under
86 a state contract is undertaken or assumed, but such agreement shall not include any
87 construction, demolition, replacement, major repair, renovation, planning, or design of
88 real property or improvements thereon for the beneficial use of the contractor.

89 (15) 'Utilization plan' means a plan prepared by a contractor and submitted in connection
90 with a proposed state contract. Such plan shall identify certified businesses, if known,
91 that have committed to perform work in connection with the proposed state contract as
92 well as any certified business, if known, which the contractor intends to use in connection
93 with the contractor's performance of the proposed state contract. Such plan shall
94 specifically contain a list, including the name, address, and telephone number, of each
95 certified business with which the contractor intends to subcontract.

96 (16) 'Women owned business enterprise' means a business enterprise, including a sole
97 proprietorship, partnership, or corporation, that is:

- 98 (A) At least 70 percent owned by one or more United States citizens or permanent
99 resident aliens who are women;
100 (B) An enterprise in which the ownership interest of such women is real, substantial,
101 and continuing;
102 (C) An enterprise in which such women ownership has and exercises the authority to
103 control independently the day-to-day business decisions of such enterprise; and
104 (D) Authorized to do business in this state and is independently owned and operated.

105 50-5-151.

106 (a) There is created within the Department of Administrative Services the Division of
107 Supplier Diversity. The head of the division shall be the director, who shall be appointed
108 by and hold office at the pleasure of the commissioner of administrative services. It shall
109 be the duty of the director to assist the Governor in the formulation and implementation of
110 laws and policies relating to minority and women owned business enterprises.

111 (b) The director may appoint such deputies, assistants, and other employees as may be
112 needed for the performance of the duties prescribed in this article. The director may
113 request and shall receive from any state agency such assistance as may be necessary to
114 carry out the provisions of this article.

115 (c) The director shall have the following powers and duties:

116 (1) To encourage and assist contracting agencies in their efforts to increase participation
117 by minority and women owned business enterprises on state contracts and subcontracts
118 so as to facilitate the award of a fair share of such state contracts and subcontracts to
119 them;

120 (2) To develop standardized forms and reporting documents necessary to implement this
121 article;

122 (3) To conduct educational programs consistent with the purposes of this article;

123 (4) To periodically review the practices and procedures of each contracting agency for
124 compliance with the provisions of this article and to require such contracting agencies to
125 file periodic reports with the division as to the participation level of minority and women
126 owned business enterprises in the awarding of state contracts;

127 (5) To report to the Governor and the chairpersons of the Senate Finance Committee and
128 the House Committee on Ways and Means on January 1 of each year the level of certified
129 minority and women owned business enterprises participating in each contracting
130 agency's state contracts, the activities of the division, and the efforts by each contracting
131 agency to promote employment of minority group members and women and to promote
132 and increase participation by certified businesses with respect to state contracts and
133 subcontracts so as to facilitate the award of a fair share of state contracts to such certified

134 businesses. The director may recommend new activities and programs to effectuate the
 135 purposes of this article;

136 (6) To prepare and periodically update a directory of certified businesses which shall,
 137 wherever practicable, be divided into categories of labor, services, supplies, equipment,
 138 materials, and recognized construction trades and which shall indicate areas or locations
 139 of this state where such certified businesses are available to perform services;

140 (7) To appoint independent hearing officers who by contract or terms of employment
 141 shall preside over adjudicatory hearings for the division and who are assigned no other
 142 work by the division;

143 (8) To file a complaint when the director has knowledge that a contractor may have
 144 violated the provisions of this article and such violation is unrelated, separate, or distinct
 145 from the state contract as expressed by its terms; and

146 (9) To streamline the state certification process to accept federal and municipal
 147 corporation certifications.

148 (d) The director may provide assistance to, and facilitate access to, programs serving
 149 certified businesses as well as applicants to ensure that such certified businesses benefit,
 150 as needed, from technical, managerial, financial, and general business assistance; training;
 151 marketing; organizational and personnel skill development; project management assistance;
 152 technology assistance; bond and insurance education assistance; and other business
 153 development assistance. In addition, the director may, either independently or in
 154 conjunction with other state agencies:

155 (1) Develop a clearinghouse of information on programs and services provided by
 156 entities that may assist such certified businesses;

157 (2) Review bonding and paperwork requirements imposed by contracting agencies that
 158 may unnecessarily impede the ability of such certified businesses to compete; and

159 (3) Seek to maximize utilization by minority and women owned business enterprises of
 160 available federal resources, including, but not limited to, federal grants, loans, loan
 161 guarantees, surety bonding guarantees, technical assistance, and programs and services
 162 of the federal Small Business Administration.

163 50-5-152.

164 (a) There is established within the division the office of the minority and women owned
 165 business enterprises state-wide advocate. The state-wide advocate shall be appointed by
 166 the commissioner of administrative services.

167 (b) The state-wide advocate shall act as a liaison for minority and women owned business
 168 enterprises to assist them in obtaining technical, managerial, financial, and other business
 169 assistance for certified businesses and applicants. The state-wide advocate shall investigate

170 complaints brought by or on behalf of minority and women owned business enterprises
171 concerning certification delays and instances of violations of law by state agencies. The
172 state-wide advocate shall assist certified businesses and applicants in the certification
173 process. Other functions of the state-wide advocate shall be directed by the commissioner
174 of administrative services. The state-wide advocate may request and the director may
175 appoint staff and employees of the division to support the administration of the office of
176 the state-wide advocate.

177 (c) The state-wide advocate shall establish a toll-free number at the Department of
178 Administrative Services to be used to answer questions concerning the minority and
179 women owned business enterprises certification process.

180 (d) The state-wide advocate shall report to the director and commissioner of administrative
181 services by November 15 of each year on all activities related to fulfilling the obligations
182 of the office of the state-wide advocate. The director shall include the unedited text of the
183 state-wide advocate's report within the reports submitted by the director to the Governor
184 and the chairpersons of the Senate Finance Committee and the House Committee on Ways
185 and Means.

186 50-5-153.

187 (a) As used in this Code section, the term 'affirmative action' means recruitment,
188 employment, job assignments, promotions, upgrades, demotions, transfers, layoffs, or
189 terminations and rates of pay or other forms of compensation.

190 (b) All state contracts and all documents soliciting bids or proposals for state contracts
191 shall contain or make reference to the following provisions:

192 (1) The contractor shall not discriminate against employees or applicants for employment
193 because of race, creed, color, national origin, sex, age, disability, or marital status and
194 will undertake or continue existing programs of affirmative action to ensure that minority
195 group members and women are afforded equal employment opportunities without
196 discrimination;

197 (2) At the request of the contracting agency, the contractor shall request each
198 employment agency or labor union, or authorized representative of workers with which
199 it has a collective bargaining or other agreement or understanding, to furnish a written
200 statement that such employment agency, labor union, or representative will not
201 discriminate on the basis of race, creed, color, national origin, sex, age, disability, or
202 marital status and that such employment agency, labor union, or representative will
203 affirmatively cooperate in the implementation of the contractor's obligations provided in
204 this Code section;

205 (3) The contractor shall state in all solicitations or advertisements for employees that, in
206 the performance of the state contract, all qualified applicants will be afforded equal
207 employment opportunities without discrimination because of race, creed, color, national
208 origin, sex, age, disability, or marital status;

209 (4) The contractor shall include the provisions of paragraph (1) of this subsection in
210 every subcontract, except as provided in paragraph (6) of this subsection, in such a
211 manner that the provisions will be binding upon each subcontractor as to work in
212 connection with the state contract;

213 (5) The provisions of this Code section shall not be binding upon contractors or
214 subcontractors in the performance of work or the provision of services or any other
215 activity that is unrelated, separate, or distinct from the state contract as expressed by its
216 terms;

217 (6) In the implementation of this Code section, the contracting agency shall consider
218 compliance by a contractor or subcontractor with the requirements of any federal law
219 concerning equal employment opportunity which effectuates the purpose of this Code
220 section. The contracting agency shall determine whether the imposition of the
221 requirements of this Code section duplicate or conflict with any such law, and if such
222 duplication or conflict exists, the contracting agency shall waive the applicability of this
223 Code section to the extent of such duplication or conflict;

224 (7) The director shall promulgate rules and regulations to ensure that contractors and
225 subcontractors undertake programs of affirmative action and equal employment
226 opportunity as required by this Code section. Such rules and regulations as they pertain
227 to any particular agency shall be developed after consultation with contracting agencies.
228 Such rules and regulations may require a contractor, after notice in a bid solicitation, to
229 implement an equal employment opportunity program after bid opening and prior to the
230 award of any contract and may require the contractor or subcontractor to submit
231 compliance reports relating to the contractor's or subcontractor's operation and
232 implementation of any equal employment opportunity program in effect as of the date the
233 contract is executed. The contracting agency may recommend to the director that the
234 director take appropriate action according to the procedures set forth in Code Section
235 50-5-158 against the contractor for noncompliance with the requirements of this Code
236 section. The contracting agency shall be responsible for monitoring compliance with this
237 Code section; and

238 (8) The requirements of this Code section shall not apply to any employment outside this
239 state, application for employment outside this state, or solicitations or advertisements
240 therefor or any existing programs of affirmative action regarding employment outside this

241 state, and the effect of the contract provisions required by paragraph (1) of this subsection
242 shall be so limited.

243 50-5-154.

244 (a) The director is authorized and directed to commission a state-wide disparity study
245 regarding the participation of minority and women owned business enterprises in state
246 contracts to be delivered to the Governor and the chairpersons of the Senate Finance
247 Committee and the House Committee on Ways and Means no later than 12 months after
248 the effective date of this article, and such study shall be updated every two years from the
249 date of the most current state-wide diversity study. The study shall be prepared by an
250 entity independent of the Department of Administrative Services and selected through a
251 request for proposal process. The purpose of such study is:

252 (1) To determine whether there is a disparity between the number of qualified minority
253 and women owned business enterprises ready, willing, and able to perform state contracts
254 for commodities, services, and construction and the number of such contractors actually
255 engaged to perform such contracts and to determine what changes, if any, should be made
256 to state policies affecting minority and women owned business enterprises; and

257 (2) To determine whether there is a disparity between the number of qualified minority
258 group members and women ready, willing, and able with respect to labor markets,
259 qualifications, and other relevant factors to participate in contractor employment and
260 management level bodies, including boards of directors, and as senior executive officers
261 within contracting agencies and the number of such minority group members and women
262 actually employed or affiliated with state contractors in the aforementioned capacities and
263 to determine what changes, if any, should be made to state policies affecting minority
264 group members and women with regard to state contractors' employment and
265 appointment practices relative to diverse group members.

266 Such study shall include, but shall not be limited to, an analysis of the history of programs
267 for minority and women owned business enterprises and their effectiveness as a means of
268 securing and ensuring participation by minority group members and women and a disparity
269 analysis by market area and region of this state. Such study shall distinguish among male
270 minority group members, female minority group members, and nonminority females in the
271 statistical analysis.

272 (b) The director shall transmit the state-wide disparity study to the Governor and the
273 chairpersons of the Senate Finance Committee and the House Committee on Ways and
274 Means upon completion and shall post such study on the website of the Department of
275 Administrative Services.

276 50-5-155.

277 (a) Each state agency shall structure procurement procedures for contracts made directly
278 or indirectly to minority and women owned business enterprises, consistent with the
279 purposes of this article, to achieve the following results with regard to total annual
280 state-wide procurement:

281 (1) It is in the national interest to expeditiously ameliorate the conditions of socially and
282 economically disadvantaged groups;

283 (2) Such conditions can be improved by providing the maximum practicable opportunity
284 for the development of successful business concerns owned by members of socially and
285 economically disadvantaged groups;

286 (3) Such development can be materially advantaged through the procurement by the state
287 for articles, equipment, supplies, services, materials, and labor from such concerns;

288 (4) Such procurements also benefit the state by encouraging the expansion of diverse
289 suppliers for such procurements, thereby encouraging competition among such suppliers
290 and promoting economy in such procurements; and

291 (5) It is the purpose of this article to:

292 (A) Promote the business development of business concerns owned and operated by
293 socially and economically disadvantaged individuals so that such concerns can compete
294 on an equal basis in the American economy;

295 (B) Promote the competitive viability of such concerns in the marketplace by providing
296 such available contract, financial, technical, and management assistance as may be
297 necessary; and

298 (C) Clarify and expand the supplier diversity program for the procurement by the state
299 of articles, equipment, supplies, services, materials, and labor from concerns owned by
300 socially and economically disadvantaged individuals.

301 (b) The director shall ensure that each state agency has been provided with a copy of the
302 most current state-wide disparity study.

303 (c) Each state agency shall develop and adopt agency-specific goals based on the findings
304 of the most current state-wide disparity study.

305 (d) The director shall promulgate rules and regulations pursuant to the goals established
306 in subsection (a) of this Code section that provide measures and procedures to ensure that
307 certified businesses shall be given the opportunity for maximum feasible participation in
308 the performance of state contracts and to assist in the contracting agency's identification
309 of those state contracts for which certified businesses may best bid to actively and
310 affirmatively promote and assist their participation in the performance of state contracts so
311 as to facilitate the contracting agency's achievement of the maximum feasible portion of
312 the goals for state contracts to such certified businesses.

- 313 (e) The director shall promulgate rules and regulations that:
- 314 (1) Provide for the certification and decertification of minority and women owned
315 business enterprises for all state agencies through a single process that meets applicable
316 requirements;
- 317 (2) Require that each contract solicitation document accompanying each solicitation sets
318 forth the expected degree of participation by minority and women owned business
319 enterprises based, in part, on:
- 320 (A) The potential subcontract opportunities available in the prime procurement
321 contract; and
- 322 (B) The availability, as contained within the most current state-wide diversity study,
323 of certified businesses to respond competitively to potential subcontract opportunities;
- 324 (3) Require that each state agency provide a current list of certified businesses to each
325 prospective contractor;
- 326 (4) Allow a contractor that is a certified business enterprise to use the work it performs
327 to meet requirements for use of certified businesses as subcontractors;
- 328 (5) Provide for joint ventures, which a bidder may count toward meeting participation
329 by minority and women owned business enterprises;
- 330 (6) Consistent with subsection (i) of this Code section, provide for circumstances under
331 which a contracting agency may waive obligations of the contractor relating to
332 participation by minority and women owned business enterprises;
- 333 (7) Require that a contracting agency verify that minority and women owned business
334 enterprises listed in a successful bid are actually participating to the extent listed in the
335 project for which the bid was submitted;
- 336 (8) Provide for the collection of statistical data by each contracting agency concerning
337 actual participation by minority and women owned business enterprises; and
- 338 (9) Require each contracting agency to consult the most current state-wide disparity
339 study when calculating agency-wide and contract-specific participation goals pursuant
340 to this article.
- 341 (f) Solely for the purpose of providing the opportunity for meaningful participation by
342 certified businesses in the performance of state contracts as provided in this Code section,
343 state contracts shall include leases of real property by a state agency to a lessee where the
344 terms of such leases provide for the construction, demolition, replacement, major repair,
345 or renovation of real property and improvements thereon by such lessee and the cost of
346 such construction, demolition, replacement, major repair, or renovation of real property and
347 improvements thereon shall exceed the sum of \$100,000.00. Reports to the director
348 pursuant to Code Section 50-5-158 shall include activities with respect to all such state
349 contracts. Contracting agencies shall include or require to be included, with respect to state

350 contracts for the acquisition, construction, demolition, replacement, major repair, or
 351 renovation of real property and improvements thereon, such provisions as may be
 352 necessary to effectuate the provisions of this Code section in every bid specification and
 353 state contract, including but not limited to:

354 (1) Provisions requiring contractors to make a good faith effort to solicit active
 355 participation by certified businesses provided to the contracting agency by the office of
 356 the state-wide advocate;

357 (2) Requiring the parties to agree, as a condition of entering into such contract, to be
 358 bound by the provisions of Code Section 50-5-159; and

359 (3) Requiring the contractor to include the provisions set forth in paragraphs (1) and (2)
 360 of this subsection in every subcontract in a manner that the provisions will be binding
 361 upon each subcontractor as to work in connection with such contract; provided, however,
 362 that no such provisions shall be binding upon contractors or subcontractors in the
 363 performance of work or the provision of services that are unrelated, separate, or distinct
 364 from the state contract as expressed by its terms, and nothing in this Code section shall
 365 authorize the director or any contracting agency to impose any requirement on a
 366 contractor or subcontractor except with respect to a state contract.

367 (g) In the implementation of this Code section, the contracting agency shall:

368 (1) Consult the findings contained within the most current state-wide disparity study
 369 evidencing relevant industry specific availability of certified businesses;

370 (2) Implement a program that will enable the contracting agency to evaluate each
 371 contract to determine the appropriateness of the goal pursuant to subsection (a) of this
 372 Code section;

373 (3) Consider where practicable the severability of construction projects and other
 374 bundled contracts; and

375 (4) Consider compliance with the requirements of any federal law concerning
 376 opportunities for minority and women owned business enterprises which effectuates the
 377 purpose of this Code section. The contracting agency shall determine whether the
 378 imposition of the requirements of this Code section duplicate or conflict with any such
 379 law, and if such duplication or conflict exists, the contracting agency shall waive the
 380 applicability of this Code section to the extent of such duplication or conflict.

381 (h)(1) Contracting agencies shall administer the rules and regulations promulgated by the
 382 director in a good faith effort to meet the maximum feasible portion of the contracting
 383 agency's goals adopted pursuant to this article and the rules and regulations of the
 384 director. Such rules and regulations shall require a contractor to submit a utilization plan
 385 after bids are opened and when bids are required but prior to the award of a state contract;
 386 shall require the contracting agency to review the utilization plan and to post the

387 utilization plan and any waivers of compliance issued pursuant to subsection (i) of this
388 Code section on the website of the contracting agency within a reasonable period of time
389 as established by the director; shall require the contracting agency to notify the contractor
390 in writing within a period of time specified by the director as to any deficiencies
391 contained in the utilization plan; shall require remedy thereof within a period of time
392 specified by the director; shall require the contractor to submit periodic compliance
393 reports relating to the operation and implementation of any utilization plan; shall not
394 allow any automatic waivers but shall allow a contractor to apply for a partial or total
395 waiver of the requirements of participation by minority and women owned business
396 enterprises pursuant to subsections (i) and (j) of this Code section; shall allow a
397 contractor to file a complaint with the director pursuant to subsection (k) of this Code
398 section in the event a contracting agency has failed or refused to issue a waiver of the
399 requirements of participation by minority and women owned business enterprises or has
400 denied such request for a waiver; and shall allow a contracting agency to file a complaint
401 with the director pursuant to subsection (l) of this Code section in the event a contractor
402 is failing or has failed to comply with the requirements of participation by minority and
403 women owned business enterprises set forth in the state contract where no waiver has
404 been granted.

405 (2) The rules and regulations promulgated pursuant to this paragraph regarding a
406 utilization plan shall provide that when certified businesses have been identified within
407 a utilization plan, a contractor shall attempt, in good faith, to utilize such certified
408 businesses at least to the extent indicated. A contracting agency may require a contractor
409 to indicate, within a utilization plan, what measures and procedures such contractor
410 intends to take to comply with the provisions of this article but may not require, as a
411 condition of, award of, or compliance with, a contract that a contractor utilize a particular
412 certificate business in performance of the contract.

413 (3) Without limiting other grounds for the disqualification of bids or proposals on the
414 basis of nonresponsibility, a contracting agency may disqualify the bid or proposal of a
415 contractor as being nonresponsible for failure to remedy notified deficiencies contained
416 in the utilization plan within a period of time specified in regulations promulgated by the
417 director after receiving notification of such deficiencies from the contracting agency.
418 When failure to remedy any notified deficiency in the utilization plan is a ground for
419 disqualification, such failure and all other grounds for disqualification shall be stated in
420 writing by the contracting agency. When the contracting agency states that a failure to
421 remedy any notified deficiency in the utilization plan is a ground for disqualification, the
422 contractor shall be entitled to an administrative hearing, on record, involving all grounds

423 stated by the contracting agency. Such hearing shall be conducted by the appropriate
 424 authority of the contracting agency to review the determination of disqualification.

425 (i) When it appears that a contractor cannot, after a good faith effort, comply with the
 426 requirements of participation by minority and women owned business enterprises set forth
 427 in a particular state contract, a contractor may file a written application with the contracting
 428 agency requesting a partial or total waiver of such participation requirements, setting forth
 429 the reasons for such contractor's inability to meet any or all of such participation
 430 requirements together with an explanation of the efforts undertaken by the contractor to
 431 obtain the required participation by minority and women owned business enterprises. In
 432 implementing the provisions of this Code section, the contracting agency shall consider the
 433 number and types of minority and women owned business enterprises located in the region
 434 in which the state contract is to be performed, the total dollar value of the state contract,
 435 the scope of work to be performed, and the project size and term. If, based on such
 436 considerations, the contracting agency determines there is not a reasonable availability of
 437 contractors in the directory of certified businesses to furnish services for the project, it shall
 438 issue a waiver of compliance to the contractor. In making such determination, the
 439 contracting agency shall first consider the availability of other business enterprises located
 440 in the region and shall thereafter consider the financial ability of minority and women
 441 owned business enterprises located outside the region in which the contract is to be
 442 performed to perform the state contract.

443 (j) For purposes of determining a contractor's good faith effort to comply with the
 444 requirements of this Code section or to be entitled to a waiver therefrom, the contracting
 445 agency shall consider whether:

446 (1) The contractor has advertised in general circulation media, trade association
 447 publications, and minority focused and women focused media and, in such event, whether
 448 or not certified businesses which have been solicited by the contractor:

449 (A) Exhibited interest in submitting proposals for a particular project by attending a
 450 pre-bid conference; and

451 (B) Have responded in a timely fashion to the contractor's solicitations for timely
 452 competitive bid quotations prior to the contracting agency's bid date;

453 (2) There has been written notification to appropriate certified businesses that appear in
 454 the directory of certified businesses prepared pursuant to paragraph (6) of subsection (c)
 455 of Code Section 50-5-151; and

456 (3) The contractor can reasonably structure the amount of work to be performed under
 457 subcontracts in order to increase the likelihood of participation by certified businesses.

458 (k) In the event that a contracting agency fails or refuses to issue a waiver to a contractor
 459 as requested within 20 days after having made application therefor pursuant to subsection

460 (i) of this Code section or if the contracting agency denies such application, in whole or in
461 part, the contractor may file a complaint with the director setting forth the facts and
462 circumstances giving rise to the contractor's complaint together with a demand for relief.
463 The contractor shall serve a copy of such complaint upon the contracting agency by
464 personal service or by certified mail, return receipt requested. The contracting agency shall
465 be afforded an opportunity to respond to such complaint in writing.

466 (l) If, after the review of a utilization plan or periodic compliance report and after such
467 contractor has been afforded an opportunity to respond to a notice of deficiency issued by
468 the contracting agency in connection therewith, it appears that a contractor is failing or
469 refusing to comply with the requirements of participation by minority and women owned
470 business enterprises as set forth in the state contract, and no waiver from such participation
471 requirements has been granted, the contracting agency may file a written complaint with
472 the director pursuant to Code Section 50-5-159 setting forth the facts and circumstances
473 giving rise to the contracting agency's complaint together with a demand for relief. The
474 contracting agency shall serve a copy of such complaint upon the contractor by personal
475 service or by certified mail, return receipt requested. The contractor shall be afforded an
476 opportunity to respond to such complaint in writing.

477 50-5-156.

478 The director shall promulgate rules and regulations setting forth measures and procedures
479 to require all contracting agencies, where practicable, feasible, and appropriate, to assess
480 the diversity practices of contractors submitting bids or proposals in connection with the
481 award of a state contract. Such rules and regulations shall take into account the nature of
482 the articles, equipment, services, supplies, materials or labor being procured by the state
483 agency; the method of procurement required to be used by a state agency to award the
484 contract and utilization plans required to be submitted pursuant to Code Section 50-5-155;
485 and such other factors as the director deems appropriate or necessary to promote the award
486 of state contracts to contractors having sound diversity practices. Such assessment shall
487 not in any way permit the automatic rejection of a bid or procurement contract proposal
488 based on lack of adherence to diversity practices. Each bid or proposal shall be analyzed
489 on an individual per-bid or per-proposal basis with the contractor's diversity practices
490 considered as only a part of a wider consideration of several factors when deciding to
491 award or decline to award a bid or proposal.

492 50-5-157.

493 (a) The director shall promulgate rules and regulations providing for the establishment of
494 a state-wide certification program, including rules and regulations governing the approval,
495 denial, or revocation of any such certification.

496 (b) For the purposes of this article, the office of the state-wide advocate shall be
497 responsible for verifying businesses as being owned, operated, and controlled by minority
498 group members or women and for certifying such verified businesses.

499 (c)(1) The director shall work with all municipal corporations that have a municipal
500 program for minority and women owned business enterprises to develop standards to
501 accept state certification to meet the municipal corporation's certification standards for
502 minority and women owned business enterprises.

503 (2) The director shall establish a procedure enabling the division to accept federal
504 certification verification for applicants of minority and women owned business
505 enterprises, provided that such standards comport with those required by the state
506 program for minority and women owned business enterprises, in lieu of requiring the
507 applicant to complete the state certification process. The director shall promulgate rules
508 and regulations to set forth criteria for the acceptance of federal certification.

509 (d) Following application for certification pursuant to this Code section, the director shall
510 provide the applicant with written notice of the status of the application, including notice
511 of any outstanding deficiencies, within 30 days. Within 60 days of submission of a final
512 completed application, the director shall provide the applicant with written notice of a
513 determination by the office approving or denying such certification and, in the event of a
514 denial, a statement setting forth the reasons for such denial. Upon a determination denying
515 or revoking certification, the business enterprise for which certification has been so denied
516 or revoked shall, upon written request made within 30 days from receipt of notice of such
517 determination, be entitled to a hearing before an independent hearing officer designated for
518 such purpose by the director. In the event that a request for a hearing is not made within
519 such 30 day period, such determination shall be deemed to be final. The independent
520 hearing officer shall conduct a hearing and, upon the conclusion of such hearing, issue a
521 written recommendation to the director to affirm, reverse, or modify such determination
522 of the director. Such written recommendation shall be issued to the parties. Within 30
523 days, the director, by order, must accept, reject, or modify such recommendation of the
524 hearing officer and set forth in writing the reasons therefor. The director shall serve a copy
525 of such order and reasons therefor upon the business enterprise by personal service or by
526 certified mail, return receipt requested.

527 (e) All certifications shall be valid for a period of three years.

528 50-5-158.

529 (a) Each contracting agency shall be responsible for monitoring state contracts under its
530 jurisdiction and recommending matters to the office of the state-wide advocate regarding
531 noncompliance with the provisions of this article so that such office may take such action
532 as is appropriate to ensure compliance with the provisions of this article, the rules and
533 regulations of the director issued pursuant to this article, and the contractual provisions
534 required pursuant to this article. All contracting agencies shall comply with the rules and
535 regulations of the office of the state-wide advocate and are directed to cooperate with such
536 office and to furnish to such office such information and assistance as may be required in
537 the performance of its functions under this article.

538 (b) Each contracting agency shall provide to prospective bidders a current copy of the
539 directory of certified businesses and a copy of the regulations.

540 (c) Each contracting agency shall report to the director the activities undertaken to promote
541 employment of minority group members and women and promote and increase
542 participation by certified businesses with respect to state contracts and subcontracts. Such
543 reports shall be submitted periodically, but not less frequently than annually, as required
544 by the director, and shall include such information as is necessary for the director to
545 determine whether the contracting agency and contractor have complied with the purposes
546 of this article, including, without limitation, a summary of all waivers of the requirements
547 of subsections (i) and (j) of Code Section 50-5-155 allowed by the contracting agency
548 during the period covered by the report, including a description of the basis of the waiver
549 request and the rationale for granting any such waiver. Each contracting agency shall also
550 include in such annual report whether or not it has been required to prepare a remedial
551 action plan and, if so, such plan and the extent to which the contracting agency has
552 complied with each element of such plan.

553 (d) The division shall issue an annual report which:

554 (1) Summarizes the report submitted by each contracting agency pursuant to subsection
555 (c) of this Code section;

556 (2) Contains such comparative or other information as the director deems appropriate,
557 including, but not limited to, goals compared to actual participation of minority and
558 women owned business enterprises in state contracting, to evaluate the effectiveness of
559 the activities undertaken by each such contracting agency to promote increased
560 participation by certified businesses with respect to state contracts and subcontracts;

561 (3) Contains a summary of all waivers of the requirements of subsections (i) and (j) of
562 Code Section 50-5-155 allowed by each contracting agency during the period covered by
563 the report, including a description of the basis of the waiver request and the rationale for
564 granting any such waiver;

565 (4) Describes any efforts to create a data base or other information storage and retrieval
566 system containing information relevant to contracting with minority and women owned
567 business enterprises; and

568 (5) Contains a summary of:

569 (A) All determinations of violations of this article by a contractor or a contracting
570 agency made during the period covered by the annual report pursuant to Code
571 Section 50-5-151; and

572 (B) The penalties or sanctions, if any, assessed in connection with such determinations
573 and the rationale for such penalties or sanctions. Copies of the annual report shall be
574 provided to the commissioner of administrative services, the Governor, the President
575 of the Senate, the Speaker of the House of Representatives, the minority leader of the
576 Senate, and the minority leader of the House of Representatives and shall also be made
577 available to the public.

578 (e) Each contracting agency that substantially fails to meet the goals supported by the most
579 current state-wide disparity study, as defined by regulation of the director, shall be required
580 to submit to the director a remedial action plan to remedy such failure.

581 (f) If it is determined by the director that any contracting agency has failed to act in good
582 faith to implement the remedial action plan pursuant to subsection (e) of this Code section
583 within one year, the director shall provide written notice of such a finding, which shall be
584 publicly available, and direct implementation of remedial actions to:

585 (1) Assure that sufficient and effective solicitation efforts to minority and women owned
586 business enterprises are being made by such contracting agency;

587 (2) Divide contract requirements, when economically feasible, into quantities that will
588 expand the participation of minority and women owned business enterprises;

589 (3) Eliminate extended experience or capitalization requirements, when
590 programmatically and economically feasible, that will expand participation by minority
591 and women owned business enterprises;

592 (4) Identify specific proposed contracts as particularly attractive or appropriate for
593 participation by minority and women owned business enterprises with such identification
594 to result from and be coupled with the efforts of paragraphs (1), (2), and (3) of this
595 subsection; and

596 (5) Upon a finding by the director that an agency has failed to take affirmative measures
597 to implement the remedial action plan and to follow any of the remedial actions set forth
598 by the director, and in the absence of any objective progress toward the contracting
599 agency's goals, require some or all of the contracting agency's procurement, for a
600 specified period of time, to be placed under the direction and control of another agency
601 or agencies.

602 50-5-159.

603 Upon receipt by the director of a complaint by a contracting agency that a contractor has
604 violated the provisions of a state contract which have been included to comply with the
605 provisions of this article or by a contractor that a contracting agency has violated such
606 provisions or has failed or refused to issue a waiver where one has been applied for
607 pursuant to subsection (i) of Code Section 50-5-155 or has denied such application, the
608 director shall attempt to resolve the matter giving rise to such complaint. If efforts to
609 resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer
610 the matter, within 30 days of the receipt of the complaint, to the division's hearing officers.
611 Upon conclusion of the administrative hearing, the hearing officer shall submit to the
612 director his or her decision regarding the alleged violation of the contract and
613 recommendations regarding the imposition of sanctions, fines, or penalties. The director,
614 within ten days of receipt of the decision, shall file a determination of such matter and shall
615 cause a copy of such determination along with a copy of this article to be served upon the
616 contractor by personal service or by certified mail, return receipt requested. The penalties
617 imposed for any violation which is premised upon either a fraudulent or intentional
618 misrepresentation by the contractor or the contractor's willful and intentional disregard of
619 the requirements of participation by minority and women owned business enterprises
620 included in the contract may include a determination that the contractor shall be ineligible
621 to submit a bid to any contracting agency or be awarded any such contract for a period not
622 to exceed one year following the final determination; provided, however, that if a
623 contractor has previously been determined to be ineligible to submit a bid pursuant to this
624 article, the penalties imposed for any subsequent violation, if such violation occurs within
625 five years of the first violation, may include a determination that the contractor shall be
626 ineligible to submit a bid to any contracting agency or be awarded any such contract for a
627 period not to exceed five years following the final determination. The division shall
628 maintain a website listing all contractors that have been deemed ineligible to submit a bid
629 pursuant to this Code section and the date after which each contractor shall once again
630 become eligible to submit bids.

631 50-5-160.

632 Every contracting agency shall include a provision in its state contracts expressly providing
633 that any contractor that willfully and intentionally fails to comply with the requirements
634 of participation by minority and women owned business enterprises as set forth in such
635 state contract shall be liable to the contracting agency for liquidated or other appropriate
636 damages and shall provide for other appropriate remedies on account of such breach. A
637 contracting agency that elects to proceed against a contractor for breach of contract as

638 provided in this Code section shall be precluded from seeking enforcement pursuant to
639 Code Section 50-5-159; provided, however, that the contracting agency shall include a
640 summary of all enforcement actions undertaken pursuant to this Code section in its annual
641 report submitted pursuant to subsection (c) of Code Section 50-5-158."

642

SECTION 2.

643 All laws and parts of laws in conflict with this Act are repealed.